DEPARTMENT OF STATE REVENUE

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Sales Tax and Food and Beverage Tax
For the Years 2010, 2011, and 2012

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department was not barred by the three-year statute of limitations in assessing Restaurants additional sales tax and food and beverage tax because the Restaurants filed fraudulent tax returns; Restaurants failed to provide documentary evidence sufficient to justify reconsidering the tax assessments originally based on the Department's review of the best information available; Restaurants failed to establish that the 100 percent fraud penalty was unwarranted or should have been abated under Indiana's 2015 Amnesty initiative.

ISSUES

I. Gross Retail Tax and Food & Beverage Tax - Statute of Limitations.

Authority: IC § 6-8.1-5-4; IC § 6-8.1-5-4(b)(1); IC § 6-8.1-5-1(c); IC § 6-8.1-5-2(a); IC § 6-8.1-5-2(f); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Leehaug v. State Bd. of Tax Comm'rs, 583 N.E.2d 211 (Ind. Tax Ct. 1991).

Taxpayers argue that the Department's assessments of additional sales tax and food and beverage tax were invalid because the assessments of tax and penalties were issued outside the three-year statute of limitations.

II. Gross Retail and Food & Beverage Tax - Best Information Available.

Authority: IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(b); IC § 6-2.5-9-3; IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a); IC § 6-8.1-5-1(b); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); 45 IAC 15-5-1.

Taxpayers argue that the Department's assessment of additional tax - on which the penalty liability remains - is incorrect because the Department did not rely on the best available information to impose that assessment.

III. Tax Administration - Fraud Penalty.

Authority: IC § 6-8.1-10-4(a); 45 IAC 15-5-7(f)(3); 45 IAC 15-5-7(f)(3)(A); 45 IAC 15-5-7(f)(3)(B); 45 IAC 15-5-7(f)(3)(C), (D), (E).

Taxpayers maintain that the Department's assessment of a 100 percent "fraud" penalty was unjustified.

IV. Tax Administration - Amnesty.

Authority: IC § 6-8.1-3-17(c); IC § 6-8.1-3-17(c)(1); IC § 6-8.1-3-24; LSA Doc. 15-240(E) § 4(c).

Taxpayers state that any remaining penalty liabilities purportedly due should have been abated pursuant to the terms of Indiana's 2015 tax amnesty initiative.

STATEMENT OF FACTS

Taxpayers are Indiana restaurants located in multiple locations across Indiana. An investigation was initiated by the Indiana State Excise Police and the Tippecanoe County Prosecutor's office. The Indiana State Police, Marion County Prosecutor's Office, Lafayette Police Department, Indianapolis Metropolitan Police Department, and the West Lafayette Police were involved at certain stages of the investigation and subsequent criminal prosecution of Taxpayers' individual owners. The Purdue University Police Department, Tippecanoe County Sheriff's Department, and the Department of Homeland Security were involved in the execution of the search warrants.

The Indiana Department of Revenue (Department) became involved in the investigation at the behest of the Indiana State Excise Police and Tippecanoe County Prosecutor's office. The Department was asked to participate with the investigation "to determine if probable cause existed to support the Prosecutor's office request for a search warrant."

Subsequently and pursuant to that investigation, search warrants were executed at each of the restaurant locations. The investigators seized financial records, income statements, sales summary sheets, cash paid out records, general ledgers, income tax returns, sales tax returns, and food and beverage tax returns. The investigators also seized records such as "z" tapes and computer records discovered at Taxpayers' accounting firm and at the homes of the restaurant owners.

Simultaneously, the investigating authorities seized approximately $4.5 million dollars in cash and bank proceeds from Taxpayers' business accounts and the individual owners' accounts.

Personnel from the Department's Special Investigation's Unit ("SIU") were assigned to examine the records obtained in the search warrant. As a result of that review, the Department issued "case reports" and concluded that Taxpayers "failed to report a combined total of approximately $22,780,047 thereby under-reporting the amount of Indiana sales tax by approximately $1,594,603 and Indiana Johnson county food and beverage tax by approximately $274,640."

Criminal charges were filed in Marion County against Taxpayers' individual owners. The owners were charged with multiple acts of theft. The charges alleged that the owners "did knowingly exert unauthorized control over the property, to wit: state gross retail or use taxes that were not collected and/or remitted as an agent of the State of Indiana . . . ." Subsequently the owners "entered a plea of guilty as to the theft charges . . . ." As part of the agreement the owners agreed "to make restitution to the State of Indiana, as a condition of probation for unpaid retail sales and food and beverage tax assessed by the Indiana Department of Revenue in the amount of $1,869,243.25."

As to the assets during the execution of the warrants, Taxpayers' owners entered into an "Agreement to Forfeit Property to the State of Indiana" in the Tippecanoe Superior Court. Taxpayers agreed to surrender claims to the $4.5 million dollars seized during the search. As part of that agreement the parties agreed to surrender $1,869,243 "to the State of Indiana (Indiana Department of Revenue) for the tax liability of [Taxpayers]."

The Department issued notices of proposed assessment of sales tax and food and beverage tax. The amount of the tax assessment was $1,862,403. The assessments included a 100 percent "fraud" penalty. The Department "satisfied" the assessment of tax by applying the amount of seized and forfeited cash proceeds against the tax liability. According to the Department, what remained owing and unsatisfied were the original penalty amounts and interest costs which had accrued against those penalties.

Taxpayers disagreed with the assessment of tax and penalties and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayers' representatives explained the basis for the protest. This Letter of Finding results.

I. Gross Retail Tax and Food & Beverage Tax - Statute of Limitations.

DISCUSSION

Taxpayers argue that the assessments of additional sales tax and food and beverage taxes were barred by the three-year statute of limitations. Because the tax assessments were barred, Taxpayers maintain that the remaining penalty assessment is also time-barred.

The issue is whether the assessments of additional tax and the remaining penalties are barred on the ground that the assessments - at least in part - were assessed beyond the three-year statute of limitations.

Taxpayers argue that the sales tax assessments are barred by the three-year statute of limitations because Taxpayers did not receive notice that they were suspected of having filed fraudulent tax returns. Taxpayers explain that since the proposed assessments were issued July of 2015, the 2010 and 2011 assessments were untimely. As Taxpayer explains, "We disagreed that an admission of guilt regarding 2012 has a bearing on returns and transactions taking place prior. Each tax year stands alone."

As a threshold issue, it is the Taxpayers' responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this decision, as well as the Department's decision to issue the assessments, are entitled to deference.

Taxpayers argue that the assessments are barred by the three-year statute of limitations set out at IC § 6-8.1-5-2(a). The statute provides in part as follows:

> Except as otherwise provided in this section, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed, or either of the following: (1) The due date of the return.

However, IC § 6-8.1-5-2(f) provides:

> If a person files a fraudulent, unsigned, or substantially blank return, or if a person does not file a return, there is no time limit within which the department must issue its proposed assessment.

Nonetheless, Taxpayers cite to IC § 6-8.1-5-4(b)(1) for the proposition that the assessments are barred because Taxpayers did not receive notice from the Department that any of their tax returns were "fraudulent." IC § 6-8.1-5-4 provides as follows:

> (a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.
>
> (b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person has filed:
> (1) for an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return, or an unsigned or substantially blank return; or
> (2) in all other cases, for a period of at least three (3) years after the date the final payment of the particular tax liability was due, unless after an audit, the department consents to earlier destruction.

> In addition, if the limitation on assessments provided in section 2 of this chapter is extended beyond three (3) years for a particular tax liability, the person must retain the books and records until the assessment period is over.
>
> (c) A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times. (Emphasis added).

According to Taxpayers, because they did not receive notice that their sales tax and food and beverage tax returns were "fraudulent," the assessments are time-barred. As explained by Taxpayers' representatives:

> Without the issuance of such [IC § 6-8.1-5-4(b)] notice, the taxpayer is not put on notice that the Department intends to issue an assessment outside of the statute of limitations and that records must be maintained accordingly.

The Department's investigation of Taxpayers' business practices found that "source documents were not kept by the restaurants" as required by IC § 6-8.1-5-4. The investigation report indicates that "most guest check tickets were destroyed on a regular basis," that "[e]ach restaurant had a significant amount of 'no sale' transactions recorded on the cash register 'z' tapes," and that "[t]he majority of the restaurants did not keep register tapes . . . ." According to the Department's SIU reports:

> The most notable item on the "z" tapes was the extraordinary amount of "no sales" recorded each day, often as many as half of the actual sales recorded. This indicates when the cash register was opened but no sale recorded.

The Department's audit report also notes that Taxpayers' owners were charged with and pled guilty to theft of sales and food and beverage taxes collected from Taxpayers' customers.

The Department does not agree with Taxpayers' reliance on and interpretation of IC § 6-8.1-5-4 because the statute addresses the length of time that Taxpayers are required to retain their business records. Under that provision, taxpayers may be required to retain records for an indefinite period if the affected taxpayer receives notice from the Department that it is suspected that the taxpayer filed fraudulent returns. IC § 6-8.1-5-4 does not impose a limitation under which assessment of additional tax and penalties may be imposed.

The issue of whether the assessments are barred arises under IC § 6-8.1-5-2(a) because the assessments were made outside the three-year limitations. The assessments are not barred because Taxpayers' filed fraudulent returns. The fraudulent returns are plainly evidenced by their owners' decision to plead guilty of stealing sales tax and food and beverage tax collected from Taxpayers' customers and failing to collect and remit the tax received from those customers. In addition, the Department's Special Investigation Unit's reports provide unambiguous and detailed evidence that Taxpayers failed in their obligation to collect, properly account for, report, and remit Indiana sales tax and county food and beverage tax.

The Department concludes that IC § 6-8.1-5-2(f) says what it means and means what it says. As the Tax Court has explained, statutory construction starts with the "plain and ordinary meaning of the language used." Leehaug v. State Bd. of Tax Comm'rs, 583 N.E.2d 211, 212 (Ind. Tax Ct. 1991). IC § 6-8.1-5-2(f) provides in "plain and ordinary" language if a person files a "fraudulent" return, "there is no time limit within which the department must issue its proposed assessment."

FINDING

Taxpayers' protest is denied.

II. Gross Retail and Food & Beverage Tax - Best Information Available.

DISCUSSION

Taxpayers challenge the factual basis on which the original proposed tax assessments were based. Taxpayers take note of the statutory provision which requires the Department to issue notices of assessment based on the "best information available" (BIA) but challenge whether in fact the Department did so. Taxpayers explain:

> The Department's BIA assessment for each restaurant was based partially on the records of the restaurant, the cost of goods sold, and partially upon the Department's determination that each taxpayer's restaurant

should operate similarly to a restaurant (not one of the taxpayer restaurants) audited by the Department of Revenue several years before the audit in question here.

Taxpayers maintain that "[e]ach [T]axpayer filed income, sales, and food and beverage tax returns for all the years at issue. The 'best information available' to the Department, therefore, prior to November 18, 2013, was [original] tax returns themselves."

Taxpayers further complain that "[e]ach [T]axpayer attempted to depose each auditor who assisted with the best information available determination prior to the tax protest hearings, but was denied the ability to do so by the Department."

As noted in Part I above, it is the Taxpayers' responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A retail merchant - such as Taxpayers - is required to "collect the tax as agent for the state." IC § 6-2.5-2-1(b). The retail merchant "holds those taxes in trust for the state and is personally liable for the payment of those taxes . . . ." IC § 6-2.5-9-3.

The SIU reports and the audit found that Taxpayers failed to maintain accurate and complete sales, financial, and tax records because the owners or their employees manipulated the cash register records and/or destroyed source documents. The records obtained in the search warrants established a consistent pattern of underreporting of sales tax as far back as 1999. The evidence established that in many of the restaurant locations, Taxpayers maintained a second set of accounting records. However, Taxpayers did not maintain this second set of records in their entirety. The audit assessed a 3.50 markup to costs of goods sold based on this second set of records.

In the absence of returns and source documentation and the evidence found in the two sets of accounting records, the audit made a determination of the tax due based on the "best information available."

As a business conducting retail transactions and collecting sales tax, Taxpayers are required to maintain accurate financial records. "Every person subject to a listed tax must keep books and records so that the Department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." IC § 6-8.1-5-4(a). "If the [D]epartment reasonably believes that a person has not reported the proper amount of tax due, the [D]epartment shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the [D]epartment." IC § 6-8.1-5-1(b) (Emphasis added) See also 45 IAC 15-5-1.

The Department's investigation found that Taxpayers failed to maintain "source documents" and that it was Taxpayers' practice to destroy "guest check tickets" on a regular basis. In addition the Department's investigation questioned the accuracy of Taxpayers' daily summary register tapes ("z-tape") because the cash register daily tapes were not retained. The audit report also indicates that it was the practice of Taxpayers' employees to record a lesser amount than the actual sales price and used the "no sale" register button to ring up particular transactions. As noted in the Department's report, "The most notable items on the [cash register] tapes was the extraordinary amount of 'no sales' recorded each day, often as many as half of the actual sales recorded."

The Department noted a disparity between the amount of sales transactions and the corresponding bank records. In reviewing Taxpayers' bank accounts, the audit found that "there were no cash deposits for many months, and often there were no cash deposits for years."

The Department's review considered a limited number of "guest checks," bank deposit slips, credit card receipts, purchase invoices, cash register tapes, "tracking sheets," bank records, "closing reports," and "daily sales sheets." As detailed in the investigative reports, the Department concluded that Taxpayers, "failed to report a combined total of approximately $22,780,047 thereby under-reporting the amount of Indiana Sales tax by approximately $1,594,603 and Indiana Food and Beverage Tax by approximately $274,640." However, Taxpayers have failed to provide verifiable source documentation sufficient to support their assertion that the assessment was "wrong."

Given Taxpayers' failure to maintain complete and accurate records as required under IC § 6-8.1-5-4(a), Taxpayers' practice of maintaining two sets of accounting records, Taxpayers' owners' decision to plead guilty to criminal charges of theft, and the lengthy and detailed examination conducted by the Department's SIU, the Department is unable to agree that Taxpayers have met their statutory burden of establishing that the proposed assessments of tax were wrong. Taxpayers invite the Department to base any tax assessment on Taxpayers' original sales, food and beverage tax, and income tax returns; the Department must decline that invitation. Any alternative calculation is based on the same flawed, unreliable, and incomplete data that the Department rejected in its initial investigation.

In order for the Department to consider reviewing the assessments, Taxpayers are required by the law to establish that the assessments are "wrong." IC § 6-8.1-5-1(c). Taxpayers have provided no reliable source data and nothing of substance which would warrant such a recomputation of the Department's assessments. Although Taxpayers believe that the assessments are either excessive or entirely unwarranted, they have provided no source documentary evidence which would support such a conclusion as required by IC § 6-8.1-5-4(a).

FINDING

Taxpayers' protest is denied.

III. Tax Administration - Fraud Penalty.

DISCUSSION

Taxpayers maintain that the 100 percent fraud penalty is unjustified because Taxpayers "submitted ST-103s and BT-1s for every applicable month for every year at issue via a professional accounting firm []." Taxpayers explain that "this is not a situation where a taxpayer failed to submit returns or failed to submit payment of the tax due, per the return. Instead, for each restaurant, a tax professional was utilized to assist in the filing of sales tax returns and submission of payment."

In addition, Taxpayers argue that the Department cannot rely on the owners' guilty pleas to the criminal theft charges. According to Taxpayers, "The guilty pleas only concerned sales tax for 2012. Each tax year stands alone, and the Department cannot rely on the guilty plea concerning 2012 to prove any of the required elements for 2010 and 2011." Further, Taxpayers maintain that although the owners may have admitted to criminal theft of money due Indiana, neither owner was "conceding to a 100[percent] fraud penalty for tax year 2012 for any of the restaurants, as the proposed [penalty] assessments in question were not even issued until several months after sentencing."

The Department assessed the penalty because of the apparent and substantial disparity between the amount of taxes Taxpayers received from their customers and the amount of taxes which were forwarded to the Department. Nonetheless, Taxpayers protest this assessment stating that the tax and penalties were unjustified.

IC § 6-8.1-10-4(a) states that, "If a person fails to file a return or to make a full tax payment with that return with the fraudulent intent of evading the tax, the person is subject to a penalty. (b) The amount of the penalty imposed for a fraudulent failure described in subsection (a) is one hundred percent (100[percent]) multiplied by: (1) the full amount of the tax, if the person failed to file a return; or (2) the amount of the tax that is not paid, if the person failed to pay the full amount of tax."

The pertinent Indiana regulation, 45 IAC 15-5-7(f)(3), states:

> A person who files a return which makes a false representation(s) with knowledge or reckless ignorance of the falsity will be deemed to have filed a fraudulent return. There are five elements to fraud.
>
> (A) Misrepresentation of a material fact: A person must truthfully and correctly report all information required by the Indiana Code and the [D]epartment's regulations. Any failure to correctly report such information is a misrepresentation of a material fact. Failure to file a return may be a misrepresentation.
>
> (B) Scienter: This is a legal term meaning guilty knowledge or previous knowledge of a state of facts, such as evasion of tax, which it was a person's duty to guard against. A person must have actual knowledge of the responsibility of reporting the information under contention. However, the reckless making of statements without regard to their truth or falsity may serve as an imputation of scienter for purpose of proving fraud.

(C) Deception: Deception operates on the mind of the victim of the fraud. If a person's actions or failure to act causes the [D]epartment to believe a given set of facts which are not true, the person has deceived the [D]epartment.

(D) Reliance: Reliance also concerns the state of mind of the victim and is generally considered along with deception. If the person's actions, failure to act, or misrepresentations cause the [D]epartment to rely on these acts to the detriment or injury of the [D]epartment, the reliance requirement of fraud will be met.

(E) Injury: The fraud instituted upon the [D]epartment must cause an injury. This can be satisfied simply by the fact that the misrepresentation(s) caused the [D]epartment not to have collected the money which properly belongs to the state of Indiana.

In order to demonstrate fraud, the Department is required to prove from the record each of the above elements set out in 45 IAC 15-5-7(f)(3). Based upon the substantial disparity between the amount of the Taxpayers' actual taxable sales and the amount of taxable sales reported to the Department along with evidence of sales to Indiana customers for which no sales tax or food and beverage tax was charged, the Department was justified in concluding that Taxpayers committed a "misrepresentation of material fact," pursuant to 45 IAC 15-5-7(f)(3)(A).

Bearing in mind that Taxpayers' owners were charged with and pled guilty to criminal theft of sales tax and failure to collect tax, Taxpayers had actual knowledge of the repeated misrepresentations or, in the alternative, Taxpayers exhibited a reckless disregard for the truth. In that plea agreement, Taxpayers' owners admitted the truth of all the facts alleged in charges against them and agreed to pay restitution to the state in an amount reflecting the Department's calculation of the underreported taxes for each of the restaurants. As a result, the Department reasonably concluded that Taxpayers exhibited the "scienter" element required under 45 IAC 15-5-7(f)(3)(B).

The Department accepted and relied upon the tax returns and Taxpayers' representations as to its taxable sales for a period of up to three years. In deciding to impose the 100 percent fraud penalty, the Department was justified in concluding that Taxpayers acted with an intent to deceive, that the Department had mistakenly relied upon Taxpayers' representations, and that the Department was "injured" because it failed to collect the amount of tax to which it - and by implication the state of Indiana - was entitled. Therefore, the elements of fraud set out in 45 IAC 15-5-7(f)(3)(C), (D), and (E) are met.

FINDING

Taxpayers' protest is denied.

IV. Tax Administration - Amnesty.

DISCUSSION

Taxpayers argue that the Department acted arbitrarily in "unilaterally and without explanation" satisfying the sales tax and food and beverage taxes by means of the cash seized in the original criminal investigation leaving behind only the now-disputed penalty and interest charges. As explained by Taxpayers:

> Without any "base tax" left, all each taxpayer had to do, per the [amnesty] program, was opt-in, and the penalties and interest portions of the assessment would be waived; thus leaving no tax, penalty or interest remaining.

Taxpayers complain that they were belatedly "informed that the taxpayers were ineligible for the program despite receiving [] notices of eligibility in September 2015."

IC § 6-8.1-3-17(c) provided that "The department shall establish an amnesty program for taxpayers having an unpaid tax liability for a listed tax that was due and payable for a tax period ending before January 1, 2013."

In exchange for voluntary participation in the program, the Department was directed to "abate and not seek to collect any interest, penalties, collection fees or costs that would otherwise be applicable." IC § 6-8.1-3-17(c)(1).

In initiating the amnesty program, the legislature mandated that the Department implement "emergency" rules. IC § 6-8.1-3-24.

The Department implemented emergency regulations. In part, the regulations provided that, "A taxpayer is ineligible to participate in the amnesty program if the taxpayer has pled guilty to or been convicted to tax fraud." LSA Doc. 15-240(E) § 4(c).

As stipulated in the Tippecanoe Superior Court forfeiture agreement entered into with and signed by Taxpayers' owners, all the interested parties agreed that the owners would surrender any right to $1,869,243 in favor to "the State of Indiana (Indiana Department of Revenue) for the tax liability of [Taxpayers]." Those interested parties agreed in writing that the amount would be offset against the pending tax liability. Having done so, the Department's amnesty regulation precluded Taxpayers' from obtaining any benefit from Indiana's 2015 amnesty initiative. The Department does not agree that the 2015 Amnesty initiative, established to encourage taxpayers to make "voluntary payment of tax liability," was intended to benefit taxpayers who committed fraud, concealed their tax liability, manipulated their financial records, and stole money from their customers and the state. IC § 6-8.1-3-17(c).

FINDING

Taxpayers' protest is denied.

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